In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 667

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION; and LOCALS 6, 10, 34, 54 and 91, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. i-ix) is reported at 378 F. 2d 33. The Board's Decision and Order in the unfair labor practice case (Pet. x-xx) is reported at 153 NLRB 1363. The related Decision and Determination of Dispute (Pet. xxi-xxxvi) is reported at 150 NLRB 88.

JURISDICTION

The decision of the court of appeals was rendered on May 15, 1967 (Pet. i), and a decree was entered on June 8, 1967 (Pet. xxxvii-xxxix). A petition for rehearing was denied on July 3, 1967 (Pet. 2). The petition for a writ of certiorari was filed on September 29, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Section 8(b)(4)(D) of the National Labor Relations Act makes it an unfair labor practice for a union to exert strike pressure against an employer in order to compel him to assign particular work to one group of employees rather than to another group. Section 10(k) provides that, "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of" Section 8(b)(4)(D), "the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen." The question presented is whether, in the circumstances of this case, the Board properly awarded the disputed work to employees represented by the United Steelworkers of America, rather than to those represented by International Longshoremen's and Warehousemen's Union and Locals 6, 10, 34, 54 and 91 thereof.[1]

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[1] A similar question involving the same employer is presented in *Local 1291; International Longshoremen's Association* v. *National Labor Relations Board*, No. 537, this Term.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are set forth at pp. xl-xli of the petition.

STATEMENT

United States Steel Corporation (the "Company") is engaged in the manufacture of steel products from steel billets (semi-finished steel) on a 400-acre waterfront tract at Pittsburg, California (Pet. xxii, xxiv; Tr. 10, 91).[2] Prior to 1964, the Pittsburg works produced its own billets in open-hearth furnaces (Pet. xxiv; Tr. 91). These billets were transported to and from storage areas and finishing mills on the premises, with the aid of overhead cranes, by Company employees represented by the United Steelworkers of America (the "Steelworkers") (Pet. xxiv-xxv; Tr. 92-93).

In February 1964, the open-hearth furnaces were shut down in compliance with local air pollution regulations (Pet. xxv; Tr. 93). In order to maintain production, the Company began shipping steel billets aboard the Company-owned S.S. *Columbia* from its east coast plants to the Pittsburg works dock (Pet. xxv; Tr. 94-97). Plant employees represented by the

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[2] "Tr." refers to the transcript of testimony contained in Volume II of the record in the court below. References designated "Ex" are to exhibits of the Company contained in Volume III.

Steelworkers were assigned to unload the *Columbia* at Pittsburg (Pet. xxvi; Tr. 108-109).

Early in February 1964, representatives of the International Longshoremen's and Warehousemen's Union (the "ILWU") advised the Company and the Steelworkers that, unless ILWU was given the work of unloading the *Columbia*, its members would picket the Pittsburg works (Pet. xxvi-xxvii; Tr. 19-21). On February 19, the *Columbia* arrived at Pittsburg and was met by pickets bearing signs reading: "ILWU Picket Protesting Steelworkers Longshoring Under Non-Union Conditions" (Pet. xxvii; Tr. 28, Ex. 2(b), pp. 4, 25). On her subsequent arrival on May 14, the *Columbia* was met by approximately 300 pickets who blocked all access to the plant, making it impossible for employees to enter for 30 hours (Pet. xxvii; Ex. 2(b), pp. 5-6, 19-20, 22-23, 25-30). All deliveries and shipments to and from the plant were stopped, and in-plant construction work being performed by five independent contractors was halted (Pet. xxvii; Ex. 2(b), p. 6).

Upon the Company's charge that the ILWU had violated Section 8(b)(4)(D) of the Act, the Board proceeded to determine the underlying jurisdictional dispute, pursuant to Section 10(k). The Board found the following facts relevant to the dispute:

1. The Steelworkers Union is the certified representative of all of the Company's production and maintenance employees and has had a contractual relationship with the Company since 1937 (Pet. xxiv; Tr. 34-35).

2. Crane operators and employees known as "hookers" unload billets from the *Columbia* by means of two dock-side "whirly cranes" (Pet. xxvi; Tr. 99-106). There also are railroad sidings adjacent to the dock. When the *Columbia* is not in port (a round-trip to the East Coast takes 38 days), these same whirly cranes are used to unload steel from railroad cars (Pet. xxvi; Tr. 137). In addition, steel billets and other steel products are continually being loaded, unloaded, and transported within the plant (Pet. xxiv-xxv; Tr. 95-96, 108, 110, 115-116). For this purpose, the Company has 95 cranes, including 10 mobile cranes, in constant use at the Pittsburg works (Pet. xxv; Tr. 108, 193).

3. All handling of steel billets and products, including the unloading of the *Columbia*, is performed by the Company's crane operators and hookers (Pet. xxvi; Tr. 108-109). Although the Steelworkers' certification and contract does not specifically mention the work of unloading the *Columbia*—an operation which came into existence after the issuance of the certification—the job descriptions of the disputed work are substantially identical to jobs listed in the certification (Pet. xxii; Tr. 108, 109, 243-249, 252). Moreover, the Company's employees perform the same work and utilize the same skills in unloading the *Columbia* as they do in their other assignments (Pet. xxvi; Tr. 108, 109, 243-249, 252). When the Company's cranemen and hookers are not unloading the *Columbia*, they are regularly employed in loading, unloading, and transporting steel throughout the

Pittsburg works (Pet. xxxiii; Tr. 118). Company employees have unloaded the *Columbia* safely, and to the Company's satisfaction, since the operation began (Pet. xxxii; Tr. 117-118, 120).

4. The ILWU does not represent any Company employees (Pet xxiv, xxxii; Tr. 354-356). Although the unloading of ships on the Pacific Coast is traditionally performed by longshoremen, this practice is not clearly established where the unloading occurs at the wholly owned premises of an employer who also owns the ship and the cargo (Pet. xxxi, and n. 9). Moreover, although longshoremen on the Pacific Coast are experienced in the unloading of ships with "whirly cranes," the Company's employees are experienced in the similar operation of unloading trucks and railroad cars with large rotating cranes, and in lifting the extremely heavy steel billets involved (Pet. xxxii; Tr. 368). Finally, if longshoremen were employed to unload the *Columbia*, they would have to be transported a considerable distance to perform intermittent work of a limited nature, with the Company paying for any travel time incurred (Pet. xxxii-xxxiii; Tr. 358, 360-363).

The Board compared the skills and training of the employees involved with the nature of the work, and considered such factors as industry practice, the ILWU's general jurisdiction, the efficiency, economy and safety of the Company's operations, the Steelworkers' representative and contractual status, and the fact that the unloading operation was performed at a private company dock located on its premises. It

concluded that, on balance, the factors favoring the Steelworkers' claim to the work outweighed those favoring the ILWU's claim. Accordingly, the Board held that the employees represented by the Steelworkers were entitled to continue to unload the *Columbia*, and that the ILWU could not lawfully compel the Company to assign such work to its members. (Pet. xxx-xxxvi.)

When the ILWU refused to accept this determination, the Board's General Counsel issued a complaint against it, alleging a violation of Section 8(b)(4)(D) of the Act.[3] The Board upheld the complaint, finding that the ILWU had induced and encouraged individuals employed by the Company to engage in a strike or refusal to work, and had coerced and restrained the Company, with an object of compelling the Company to assign the disputed work to members of the ILWU. The Board ordered the ILWU to cease and desist from engaging in further violations of Section 8(b)(4)(D) of the Act, and to post appropriate notices. (Pet. x-xx.)

The court of appeals sustained the Board's findings and enforced its order in full (Pet. i-ix).

ARGUMENT

Section 10(k) of the National Labor Relations Act directs the Board to hear and determine jurisdictional disputes of the kind referred to in Section 8(b)(4)

[3] The 8(b)(4)(D) charge, *supra*, had been held in abeyance pending the Board's effort to resolve the underlying dispute under Section 10(k).

(D), *i.e.*, a "dispute between two or more groups of employees over which is entitled to do certain work for an employer." *National Labor Relations Board* v. *Radio and Television Broadcast Engineers Union*, 364 U.S. 573, 579. The sole question raised by petitioners is whether the court below erred in affirming the Board's determination that the Steelworkers, rather than the ILWU, was entitled to certain disputed work. This presents only an evidentiary issue which does not warrant further review by this Court. *National Labor Relations Board* v. *Pittsburgh S.S. Co.*, 340 U.S. 498, 502-503. In any event, the facts set forth above and summarized in the court's opinion (Pet. vii-viii) show that the Board's findings are supported by the record and that its ultimate decision reflects a full consideration of all of the relevant factors.[4]

[4] There is no merit to petitioners' contention that the Board refused to consider that the unloading of cargo is traditionally longshoremen's work (Pet. 3, 13). The Board considered this factor, as well as the others weighing in favor of the ILWU, but concluded that, on balance, they were outweighed by the factors in favor of the Steelworkers (Pet. xxx-xxxiii).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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